

No. 10-56971 [DC# CV 09-02371-IEG]

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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EDWARD PERUTA, et. al.,

*Plaintiffs-Appellants,*

v.

COUNTY OF SAN DIEGO, et. al.,

*Defendants-Appellees.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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**APPELLANTS' UNOPPOSED MOTION TO EXTEND DEADLINE FOR  
FILING ATTORNEYS' FEES REQUEST; DECLARATION OF SEAN A.  
BRADY IN SUPPORT THEREOF**

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## **I. RELIEF SOUGHT**

Plaintiffs-Appellants, Edward Peruta, et. al. (“Appellants”), respectfully request this Court to extend the current deadline for them to file a motion requesting attorneys’ fees until the final resolution of this appeal. At present, Appellants’ request for attorneys’ fees is due March 13, 2014. Due to recent filings that may significantly delay the finality of this matter, Appellants request a new deadline of 30 days after this Court’s final resolution of those filings.

## **II. POSITIONS OF COUNSEL**

Counsel for Appellee, James Chapin, does not oppose Appellants’ motion to extend the deadline for their motion to request attorneys’ fees. Decl. of Sean Brady (“Brady Decl.”) ¶ 2.

## **III. STATUS OF APPEAL**

On February 13, 2014, Appellants prevailed in their appeal of this matter. *See Peruta v. County of San Diego*, \_ F.3d \_, (9th Cir. 2014). Under Rule of Appellate Procedure 40(a)(1), Appellee San Diego County Sheriff William D. Gore had fourteen (14) days from the entry of that judgment to seek en banc review. February 27, 2014, has passed and Appellee did not seek review. Appellee’s decision to forego review would have made March 13, 2014, the deadline for Appellants to request attorneys’ fees. *See Fed. R. App. P. 39(a)(3)*,

39-1.6(a) (setting the deadline for attorneys' fees request if no petition for rehearing has been filed).

On February 28, 2014, however, two motions to intervene and one petition for rehearing en banc were filed with the Court by non-parties. The Court ordered any proposed petitions for rehearing filed by February 27, 2014, timely "if this Court grants the petitioners' concurrently filed motions to intervene." Order Granting Mot. Ext. Time Feb. 28, 2014. The Court has given Appellants until March 26, 2014, to file a response to each motion to intervene, and to the petition for rehearing en banc "insofar as the Petition is a motion to intervene." Order Directing Res. Mar. 5, 2014.

It therefore appears that the new deadline for Appellants' request for attorneys' fees is 14 days after the Court's disposition of those petitions, whenever that may be. Fed. R. App. P. 39-1.6(a).<sup>1</sup>

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<sup>1</sup> "Absent a statutory provision to the contrary, a request for attorneys' fees shall be filed no later than 14 days after the expiration of the period within which a petition for rehearing may be filed, unless a timely petition for rehearing is filed. If a timely petition for rehearing is filed, the request for attorneys fees shall be filed no later than 14 days after the Court's disposition of the petition." Since those petitions are still before the Court, the exact date of the new deadline is not known at this time.

**IV. THE COURT SHOULD EXTEND THE DEADLINE FOR APPELLANTS' MOTION TO REQUEST ATTORNEYS' FEES BECAUSE SUCH A REQUEST WOULD BE PREMATURE AT THIS TIME**

Because two of the petitions are not yet before the Court (as the Court must rule on their motions to intervene first), and the third may not be properly before the Court,<sup>2</sup> it is unclear whether the alternative due date for an attorney's fee motion under Federal Rule of Appellate Procedure 39-1.6(a), when a timely en banc petition is filed, is triggered here. Appellants, out of an abundance of caution and in the interest of judicial economy, therefore move the Court for a new deadline of 30 days after this Court's final resolution of those petitions, or if en banc review is granted, 30 days from issuance of opinion.

These pending motions and petitions have put the finality of this matter in doubt and rendered Appellants' original deadline for the request for attorneys' fees, March 13, 2014, premature. The extension would allow the parties to litigate the question of attorneys' fees at a later date with certainty on these questions and allow the Court to avoid having to consider an unnecessary or incomplete motion,

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<sup>2</sup> "A *party* may petition for a hearing or rehearing en banc." Fed. R. App. P. 35(b) (emphasis added). Because the California Police Chiefs' Association and California Peace Officers' Association are not parties yet, and they do not appear to have filed a proper motion to intervene, it is not certain whether their petition for rehearing is valid.

which may result regardless of whether those seeking en banc review are successful in their endeavor.

**V. CONCLUSION AND REQUEST**

In the interests of justice and judicial economy, Appellants respectfully request the Court issue an Order extending the deadline for a request for attorneys' fees until 30 days after a decision on the pending en banc petitions is made or 30 days after a decision is rendered by an en banc panel.

Date: March 11, 2014

**MICHEL & ASSOCIATES, P.C.**

/s/ C. D. Michel  
C. D. Michel  
Attorney for Plaintiff-Appellant

**DECLARATION OF SEAN A. BRADY**


I, Sean A. Brady, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am an Associate attorney at Michel & Associates, P.C., attorneys of record for Plaintiffs-Appellants. I am familiar with the facts and pleadings herein. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. On March 7, 2014, I spoke on the phone with counsel of record for Defendant-Appellee, James Chapin, to discuss whether the Appellee would oppose Appellants' motion to extend the deadline for their request for attorneys' fees. Mr. Chapin responded that the Appellee does not oppose such a motion. On March 10, 2014, I sent an electronic mail to Mr. Chapin to confirm his position, which he did.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 11th day of March, 2014, at Long Beach, California.

  
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Sean A. Brady  
Declarant

**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2014, an electronic PDF of **APPELLANTS' UNOPPOSED MOTION TO EXTEND DEADLINE FOR FILING ATTORNEYS' FEES REQUEST; DECLARATION OF SEAN A. BRADY IN SUPPORT THEREOF** was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: March 11, 2014

**MICHEL & ASSOCIATES, P.C.**

/s/ C. D. Michel

C. D. Michel

Attorney for Plaintiff-Appellant